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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,959	11/24/2003	Terry Leseberg	L541.12-0001	5204
164	7590	02/27/2006	EXAMINER	
KINNEY & LANGE, P.A. THE KINNEY & LANGE BUILDING 312 SOUTH THIRD STREET MINNEAPOLIS, MN 55415-1002			SELF, SHELLEY M	
			ART UNIT	PAPER NUMBER
			3725	

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SJP

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/720,959	LESEBERG, TERRY	
	Examiner Shelley Self	Art Unit 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 26 September 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-10 and 12-19 is/are pending in the application.
  - 4a) Of the above claim(s) 11 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 and 12-18 is/are rejected.
- 7) Claim(s) 13,19 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 November 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

<ol style="list-style-type: none"> <li>1)<input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>3)<input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.</li> </ol>	<ol style="list-style-type: none"> <li>4)<input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.</li> <li>5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</li> <li>6)<input type="checkbox"/> Other: _____.</li> </ol>
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## **DETAILED ACTION**

### ***Response to Amendment***

The amendment filed on September 26, 2005 has been considered but is ineffective to overcome the prior art reference and an action on the merits follows.

Claim 11 has been withdrawn (as denoted by amendment filed 9/26/05); accordingly the claim has not been further treated on the merits.

### ***Specification***

The amendment filed September 26, 2004 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material, which is not supported by the original disclosure, is as follows: *shear being supported solely by the beam*.

Applicant is required to cancel the new matter in the reply to this Office Action.

Also, the amendment to the specification, with regard to page 7, lines 1-8, specifically, line 8 states, “[ ] guide 68”, this is not clear. Clarification is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 14-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Neither the original written disclosure nor the drawings provide support for a "*shear being supported solely by the beam*". Explicitly the drawings illustrate a shear attached to a second frame member and the second frame member attached to a first frame, accordingly because the first and second frame members are connected transversely, it is clear that the first frame member serves to provide some support to the second frame member and thus also provides some support to the shear connected to the second frame.

Accordingly claims 14-18 have not been further treated on the merits.

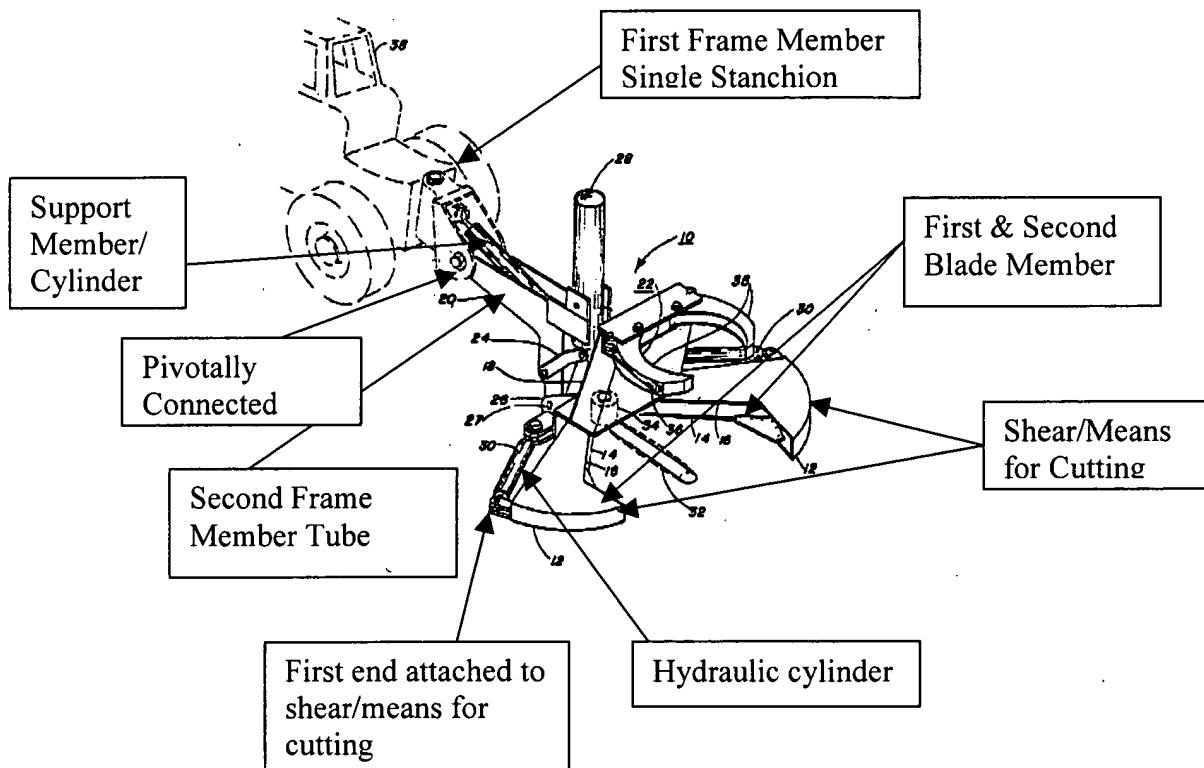
#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albright (3,881,6215) in view of White (3,913641). With regard to claims 1 and 3, Albright discloses a shear/vegetation cutting apparatus for connection to an all-terrain vehicle, comprising a frame for connection to a support structure of the vehicle (fig. 1), the frame comprising a first frame member comprising a single stanchion (fig. 1) for connecting to the all terrain vehicle; and

a second frame member (20; fig. 1) comprising a single tube (20) pivotally connected to the first frame member (fig. 1), the second frame member being transverse to the first frame member (fig. 1); a shear/means for cutting (12) attached to the second frame member (fig. 1); and a hydraulic system (col. 1, lines 55-67) attached to the shear for actuating said shear, the hydraulic system being mounted to the all terrain vehicle (col. 1, lines 63-66).



skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design mechanical expedients.

Furthermore, White teaches in a closely related art to construct the components of vegetation/tree cutting apparatus of steel/metal. White teaches the use of steel for its high tensile strength so as to maintain adequate strength for cutting vegetation/trees (col. 9, lines 30-34). Because the references are from a closely related art, it would have been obvious at the time of the invention to one having ordinary skill in the art to construct Albright's components, i.e. second frame of metal for its high tensile strength so as to efficiently cut vegetation/trees as taught by White.

With regard to claim 4, Albright discloses the means for actuating comprises a first hydraulic cylinder (30) having a first end attached to the means for cutting and a second end attached to the second frame member (fig. 1; via yoke 26); and a hydraulic system connected to the first cylinder (col. 1, lines 55-67). Examiner notes the claim as written does not prevent intermediary structure between the first hydraulic cylinder second end and the second frame member (20).

With regard to claim 12, Albright discloses the first frame member pivotally connected to the second frame member (fig. 1).

Claims 2 and 5-8 rejected under 35 U.S.C. 103(a) as being unpatentable over Albright (3,881,6215) in view of White (3,913641) as applied to claims 1 and 3 above, and further in view of Emery (5,174,098). With regard to claims 2, 5 and 6, Albright does not disclose a separate power source.

As noted in the previous Office action, Emery teaches in a similar art a vehicle apparatus for cutting/severing vegetation/tree. Emery teaches the use of plural power sources (col. 3, lines 14-15). Emery teaches a power source to power the vehicle and a second power source (30, 64) to power the cutting means for cutting vegetation (col. 3, lines 15-20). Additionally, Emery teaches the secondary power source (30) to be directly connected to a hydraulic pump (122, 124) for supplying hydraulic fluid via hydraulic lines (130, 132, 134) to the cutting/severing apparatus (col. 4, lines 5-17). Further Emery teaches a control system having valves and switches for controlling the hydraulic system (col. 4, lines 33-67 to col. 5, lines 1-67). Emery teaches that the use of a single power source to power a vehicle and a cutting apparatus may result in reduced or less than a predetermined amount of power supplied to the cutting assembly (col. 1, lines 49-53). Therefore, Emery teaches the use of separate power sources for powering the vehicle and the cutting assembly so as to deliver a predetermined amount of power to a cutting means (col. 2, lines 11-13) so as to efficiently cut/sever vegetation/tree. Because the references are from a similar art and deal with a similar problem, (i.e. powering a vehicle and an associated means for cutting) it would have been obvious at the time of the invention to one having ordinary skill in the art to construct Albright having a secondary, separate power source and hydraulic pump so as to supply a predetermined amount of power to the means for cutting for efficiently cutting/severing vegetation/tree as taught by Emery.

With regard to claim 7, Albright discloses the first frame member (fig. 1) and second frame member (20) connected by a supporting member.

With regard to claim 8, Albright discloses the supporting member comprises a second hydraulic cylinder (fig. 1) having a proximal end and a distal end, wherein the proximal end of

the second hydraulic cylinder attaches to the first frame member (fig. 1) and the distal end of the second hydraulic cylinder attaches to the second frame member and wherein the second hydraulic cylinder connects to the hydraulic system. Examiner notes an end of the support member/hydraulic cylinder (fig. 1) to be attached at a center of the first frame member (fig. 1) and to the second frame member (20) via the hydraulic system (28) and yoke (26).

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albright (3,881,6215) in view of White (3,913641) as applied to claims 1 and 3 above, and further in view of Loigerot (4,081,007). With regard to claim 9, Albright does not disclose a shear. Loigerot teaches in a closely related art a vegetation/tree cutting apparatus wherein a shear (fig. 1) is pivotally connected to a frame member at a common pivot point wherein the shear includes a first shear blade member (fig. 5) having a proximal end and a distal end, with a blade located adjacent the distal end; and a second shear blade member having a proximal end and a distal end, with a blade located adjacent the distal end, the second shear blade member being movable (via cylinders) relative to the first shear blade member to cut an object placed between the respective blades. Because the references are from a closely related art and deal with a similar problem (i.e. tree/vegetation cutting) it would have been obvious at the time of the invention to one having ordinary skill in the art to replace Albright's cutting tool (32, 12) with a shear having a first and second shearing blade with a common pivot point so as to efficiently facilitate cutting a tree/vegetation via shearing action as taught by Loigerot.

***Allowable Subject Matter***

Claims 13 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not disclose or fairly suggest *a first linking brace fastened to the first frame member and to the front grill and the second linking brace fastened to the first frame member and the distal end of the second linking brace is fastened to the front grill* in combination with the rest of the claimed limitations as set forth in claim 13.

Additionally, the prior art of record does not disclose or fairly suggest *first and second linking member, the first and second linking member pivotally connected to the first end of the first hydraulic cylinder about a common pivot point* in combination with the rest of the claimed limitations as set forth in claim 19.

As noted above, the prior art Albright discloses a frame comprising a first and second stanchion mounted to an ATV and a shear mounted to a second end of the second frame member. Albright teaches the shear blades (12) including first and second blade members to be pivotally movable towards one another via cylinders (30) so as to fell a tree or cut vegetation. Albright does not disclose or fairly suggest, *a first linking brace fastened to the first frame member and to the front grill and the second linking brace fastened to the first frame member and the distal end of the second linking brace is fastened to the front grill*. Also, Albright does not disclose or fairly suggest *first and second linking member, the first and second linking member pivotally connected to the first end of the first hydraulic cylinder about a common pivot point*. Albright is

silent to any first linking member or brace pivotally fastened to the first blade member and a second linking member pivotally fastened to the second blade member. Accordingly, Albright fails to anticipate or render obvious the claimed invention as set forth in claim 19.

Neither the prior art of record nor any combination thereof discloses the claimed invention as set forth in claim 19. Accordingly, claim 19 contains allowable subject matter over the prior art of record.

### ***Response to Arguments***

Applicant's arguments filed September 26, 2005 have been carefully considered but are moot in view of the new ground(s) of rejection.

Applicant argues that the prior art, Coughran, Jr. fails to disclose *single stanchion for attaching to the ATV*. Newly applied prior art reference, Albright discloses this deficiency. Accordingly a new rejection is made in view of Albright.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is (571) 272-4524. The examiner can normally be reached Mon-Fri from 8:30am to 5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Derris Banks can be reached at (571) 272-4419. The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8300 for regular and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on accessing the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SSelf  
February 9, 2006



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